Supreme Court, U.S.
FILED
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No. 07-985

In The

Supreme Court of the United States

In the Interest of A.D.G., M. D.G., C.G.,

J.D.G., and K.C.G., Minor Children

On petition for Writ of Certiorari to the Supreme Court of Texas

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. That a Notice of Appeal is timely filed when calculated from the date that the order ending the child support obligation, when the order terminating parental rights did not end the child support obligation.

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OPINIONS BELOW

Nature of the case. The Texas Department of Family and Protective Services removed the children from the custody of their adoptive parents David and Linda Garleigh and placed them in foster care.

Proceedings in the trial court. The lawsuit was filed in the County Court of Law #1, Ellis County, Texas, the Honorable Bob Carroll presiding.

The judgment of the trial court. Judge Carroll signed order terminating parental rights on December 2, 2005 and an order terminating child support on November 18, 2006.

Proceedings in the court of appeals. The Garleigh's appealed the judgment to the Tenth Court of Appeals.

The opinion of the panel. The Court of Appeals rendered its judgment and issued a memorandum opinion on March 28, 2007.

The opinion of the court of appeals is unpublished.

Proceeding in the Texas Supreme Court. The Texas Court Supreme Court denied review on June 22, 2007, without opinion.

STATEMENT OF JURISDICTION

A petition for review to the Supreme Court of Texas was denied on June 22, 2007, and entered on that date. This timely petition for writ of certiorari was subsequently filed on September 20, 2007. Jurisdiction of this court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The 14th Amendment to the United States Constitution provides in relevant part: "no state shall make or enforce any laws which abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF FACTS

David and Linda Garleigh are the adoptive parents of several children. Criminal charges were filed against both parents stemming from allegations of improper treatment of the children. Prior to that the Texas Department of Family and Protective Services removed the children and filed suit. David and Linda Garleigh were ordered to pay child support on June 25, 2005. After several more court appearances, a Rule 11 agreement was reached concerning the termination of David and Linda Garleigh's parental rights. On December 2, 2005 an order purporting to terminate the rights of David and Linda Garleigh was signed, however, the order did not terminate the parents support obligation. The Garleigh's continued to pay support after the December 2, 2005 order was signed. The 5 children were temporarily placed with relatives which were out-of-state. Prior to May 30, 2006 the 3 youngest children returned to Texas. The Notice of Appeal and the Motion for New Trial were filed simultaneously on November 19, 2006. Without a hearing the Trial Court denied the Motion for New Trial on November 28, 2006.

The Court of Appeals notified the Garleigh's that this cause was subject to dismissal for want of jurisdiction based on two factors: an untimely appeal, and failure to file within 15 days a Statement of Points on which the Appellant intends to appeal in accordance with Texas Family Code §263.405. The Garleigh's responded with a Brief in Support of Retention of Jurisdiction pending appeal. The Court of Appeals dismissed the appeal for want of jurisdiction.

REASONS FOR GRANTING THE WRIT

David and Linda Garleigh relinquished their parental rights based upon fraud, duress, or coercion. The order that terminated their parental rights did not terminate the obligation to pay child support, which is part

and parcel to the fraud, duress, and coercion that the Garleigh's claim. Because the order that terminated the parental rights did not terminate the child support obligation it is not a "final order" as defined by §161.206. Therefore, the order which terminated the obligation to pay child support is the order in which begins the appellate timetables.

Without review by this Court the petitioners will be denied "due process of law". The Texas Courts have failed to examine the statutory scheme in the family code which sets forth an unworkable set of requirements to perfect an appeal when a "final order" has not been properly entered.

I. Whether a Notice of Appeal is timely filed when calculated from the date that the order ending the child support obligation, when the order terminating parental rights did not end the child support obligation.

"An order terminating the parent-child relationship divests the parent and the child of *all legal rights and duties* with respect to each other..." (emphasis added) Tex. Fam. Code Ann. § 161.206 (Vernon 2003). The order dated December 2, 2005, which terminated parental rights of David and Linda Garleigh, did not dispose of the child support obligation. Therefore, the December 2, 2005 order is not a final order because it did not dispose of all issues in the case. "A judgment is 'final' for purposes of appellate jurisdiction if it disposes of all issues and parties in a case." *Sultan v. Mathew* 178 S.W.3d 747, at 751 (Tex. 2005).

David and Linda Garleigh filed a motion to have the child support stopped. Once the Trial Court signed the order, which terminated the child support obligation, on November 13, 2006 all issues were disposed of, and the November 13, 2006 order became the final order. Therefore, it is on November 13, 2006 in which the appellate timetables begin. Additionally, the Trial Court acknowledges that it still had jurisdiction over David and

Linda Garleigh and the subject matter of this suit as indicated in the November 13, 2006 order.

Additionally, the Garleigh's contend that the order that was entered is not a final order under Texas Family Code § 263.401. A "Final Order" under § 263.401 applies when a "managing conservator" is appointed and does not apply when a "permanent managing conservator" is appointed.

In order for the accelerated appellate timetables found in Texas Family Code § 263.405 to operate, the order must be "a final order rendered under this subchapter". Tex Fam. Code Ann. § 263.401 (Vernon 2003). Texas Family Code § 263.401(d) defines "final order", it specifically states,

> "(d) For purposes of this section, a final order is an order that:
> (1) requires that a child be returned to the child's parent;
> (2) names a relative of the child or another person as the child's *managing conservator*;
> (3) without terminating the parent-child relationship, appoints the department as the *managing conservator* of the child; or
> (4) terminates the parent-child relationship and appoints a relative of the child, another suitable person, or the department as *managing conservator* of the child."

(emphasis added) Tex Fam. Code Ann. § 263.401 (Vernon 2005). In this case The Department was appointed "permanent managing conservator" and not "managing conservator" as required by § 263.401. Therefore, this is not a "final order", as defined by "this subchapter" (referring to subchapter E of chapter 263) and is not subject to §263.405.

"A judgment is 'final' for purposes of appellate jurisdiction if it disposes of all issues and parties in a case."

Sultan v. Mathew 178 S.W.3d 747, at 751 (Tex.2005). In this case, the judgment became final for purposes of appellate jurisdiction when the court signed an order terminating child-support on November 18, 2006. Therefore, the Texas Appellate Courts denied the respondents due process of law guaranteed by the 14th amendment of the United States Constitution by failing to retain appellate jurisdiction and then dismissing the suit.

CONCLUSION

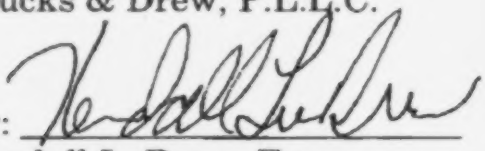
The Court of Appeals improperly denied the petitioners due process of law when they dismissed this case for want of appellate jurisdiction. The Court of Appeals should have retained jurisdiction over this case based upon the Appellant's compliance with the Texas Family Code, because the Notice of Appeal was filed within 20 days of the final order and the appellate points are contained Appellant's Motion for New Trial. Additionally, this Court should clarify what are the proper steps to be taken when Trial Court fails to adhere to Texas Family Code §263.405(d). In the alternative, this Court should hold that Texas Family Code §263.405(d) does not apply.

PRAYER

For the reasons stated in this petition, David and Linda Garleigh ask the Supreme Court to grant this writ, and request briefs from the parties, set this case for oral argument, and, after argument, reverse the judgment of the Texas Supreme Court, Texas 10th Court of Appeals and the Texas trial court and remand this case for a trial on the merits.

Respectfully submitted,

Loucks & Drew, P.L.L.C.

By: 

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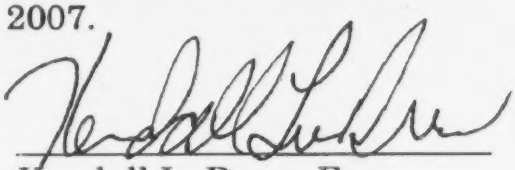
CERTIFICATE OF SERVICE

I certify that I sent 3 copies of **PETITION FOR WRIT OF CERTIORARI** to each party listed below on Thursday, November 29, 2007.



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THE STATE OF TEXAS

IN THE

TENTH COURT OF APPEALS

No. 10-07-00047-CV

IN THE INTEREST OF M.D.G., S.M.G., C.G.,

J.D.G. AND K.C.G., CHILDREN

From the County Court at Law

Ellis County, Texas

Trial Court No. 69896 CCL

MEMORANDUM OPINION

David and Linda Garleigh filed an appeal of an order terminating their parental rights.[1] The trial court signed the order on December 2, 2005. The Garleighs' notice of appeal, however, was filed November 19, 2006, almost one year later.

The Clerk of this Court notified the Garleighs by letter that their appeal was subject to dismissal for want of jurisdiction because the notice of appeal appeared untimely. The Garleighs responded that the order of termination was not a final, appealable order until the trial court signed an order on November 13, 2006, dispensing with the withholding of income from the Garleighs for child support, thus making their notice of appeal timely filed.

The Texas Family Code provides that the validity of an order terminating the parental rights of a person who has executed a relinquishment of parental rights "is not subject to collateral or direct attack *after six months after the date the order was signed.*" TEX. FAM. CODE ANN. § 161.211(a) (Vernon 2002) (emphasis added). The termination order was final for the purposes of appeal on the date it was signed. *In the Interest of T.L.S.*, 143 S.W.3d 284, 287 (Tex. App.—Waco 2004, no pet.). The termination order was signed on December 2, 2005. The Garleighs filed their notice of appeal almost one year later. The notice of appeal is untimely, and we have no jurisdiction to consider this appeal.

The appeal is dismissed.

TOM GRAY

Chief Justice

Before Chief Justice Gray,

Justice Vance, and

Justice Reyna

Appeal dismissed

Opinion delivered and filed March 28, 2007

[CV06]

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[1] The Garleighs both signed affidavits of relinquishment of their parental rights.

Appendix B

Order of the Supreme Court of Texas

THE STATE OF TEXAS

THE SUPREME COURT OF TEXAS

Orders Pronounced June 22, 2007

ORDERS ON CAUSES

06-0375 LOWRY SCHAUB, M.D. AND KEVIN CRAWFORD, M.D. v. JANIE SANCHEZ AND KENNETH ADAMS, SPOUSE; from Lubbock County; 7th district (07-04-00057-CV, ___ SW3d ___, 02-06)

Pursuant to Texas Rule of Appellate Procedure 59.1, after granting the petition for review and without hearing oral argument, the Court reverses the court of appeals' judgment and renders judgment.

Per Curiam Opinion

(Justice Johnson not sitting)

ORDERS ON CASES GRANTED

THE FOLLOWING PETITIONS FOR REVIEW ARE GRANTED:

LEIGH CAMACHO, INDIVIDUALLY AND AS NEXT FRIEND OF ROLANDO KADRIC MONTEZ, A MINOR CHILD; from Cameron County; 13th district (13-02-00577-CV, 176 SW3d 618, -13-05)

[**Note**: The date and time for oral argument are yet to be determined.]

06-0404 MAGIC VALLEY ELECTRIC COOPERATIVE v. CITY OF EDCOUCH, TEXAS; from Hidalgo County; 13th district (13-05-00202-CV, ___ SW3d ___, 23-06)

[**Note**: The date and time for oral argument are yet to be determined.]

06-0778 THE CITY OF EL PASO, ET AL. v. LILLI M. HEINRICH; from El Paso County; 8th district (08-05-00203-CV, 198 SW3d 400, -20-06)
3 petitions

[**Note**: The date and time for oral argument are yet to be determined.]

06-1028 JOHN LELAND, D.D.S. v. GEORGE C. BRANDAL AND RUTH L. BRANDAL; from Bandera

argument are yet to be determined.]

(Justice O'Neill not sitting)

ORDERS ON PETITIONS FOR REVIEW

THE FOLLOWING PETITIONS FOR REVIEW ARE DENIED:

05-0810 CITY OF GRAND PRAIRIE v. IRWIN SEATING COMPANY, MIDWEST MECHANICAL CONTRACTORS, INC., SEYFORTH ROOFING COMPANY, INC., LEWIS & LAMBERT, L.L.P., AND LINBECK/CON-REAL/RUSSELL JOINT VENTURE; from Dallas County; 5th district (05-04-00560-CV, 170 SW3d 216, -16-05)

(Justice Hecht not sitting)

06-0389 CITY OF JACKSBORO, TEXAS v. PERRY TEAGUE; from Jack County; 2nd district (02-06-00032-CV, 190 SW3d 813, C 30-06)

06-0649 SEARIVER MARITIME, INC. v. ELLA PIKE; from Harris County;

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13th district
(13-05-00033-CV, ___ SW3d ___, 08-06)

(Justice Hecht not sitting)

06-0751 DRAGON PRODUCTS, LTD. v. THOMAS REGIONAL DIRECTORY CO., INC., A DIVISION OF THOMAS PUBLISHING COMPANY, LLC; from Jefferson County; 9th district
(09-05-00176-CV, 196 SW3d 424, C 15-06)

06-0896 METROPOLITAN TRANSIT AUTHORITY v. EDWARD JACKSON; from Harris County; 1st district
(01-04-01157-CV, 212 SW3d 797, C 24-06)

07-0191 BUI PHU XUAN v. FORT WORTH STAR TELEGRAM; from Tarrant County; 2nd district
(02-06-00206-CV, ___ SW3d ___, 20: 2-07)

07-0300 RICHARDSON-EAGLE, INC. v. WILLIAM M. MERCER INCORPORATED AND WILLIAM M. MERCER OF TEXAS, INC.; from Harris County; 1st district

(01-04-01000-CV, 213 SW3d 469, 1
07-06)

07-0304 DON R. SANDERS, ET AL v. THE CITY OF GRAPEVINE; from Tarrant County; 2nd district
(02-06-00208-CV, ___ SW3d ___, 00:
1-07)
2 petitions

07-0305 JERRY O. DUEITT v. TERRY RUSSELL DUEITT TRUSTEE OF THE CHRISTY LYNN CARRIGAN TRUST; from Montgomery County; 9th district
(09-05-00423-CV, ___ SW3d ___, 00:
1-07)

07-0306 JERRY O. DUEITT v. TERRY RUSSELL DUEITT A/K/A RUSTY DUEITT; from Montgomery County; 9th district
(09-05-00422-CV, ___ SW3d ___, 00:
1-07)

07-0307 JERRY O. DUEITT v. TERRY RUSSELL DUEITT TRUSTEE OF THE JAMES WESLEY DUEITT TRUST; from Montgomery County; 9th district
(09-05-00431-CV, ___ SW3d ___, 00:
1-07)

07-0308 JERRY O. DUEITT v. TERRY RUSSELL DUEITT TRUSTEE OF THE JOHN RUSSELL DUEITT TRUST; from Montgomery County; 9th district
(09-05-00424-CV, ___ SW3d ___, 00:
1-07)

07-0309 JERRY O. DUEITT v. TERRY RUSSELL DUEITT TRUSTEE OF THE JENNIFER ANN DUEITT TRUST; from Montgomery County; 9th district
(09-05-00432-CV, ___ SW3d ___, 00:
1-07)

07-0316 JANICE MALONEY AND GEORGE LEGRAND v. ZANE MALTSBERGER; from Bexar County; 4th district
(04-05-00579-CV, ___ SW3d ___, 21:
0-06)

07-0330 ANDRE JOEL HOWARD v. HARRIS COUNTY HOSPITAL DISTRICT AND TWCC; from Travis County; 3rd district
(03-06-00488-CV, ___ SW3d ___, 00:
7-06)
motion for involuntary dismissal denied

07-0331 SID WEINBERGER v. LARRY G. LONGER; from Galveston County;

07-0308 JERRY O. DUEITT v. TERRY RUSSELL DUEITT TRUSTEE OF THE JOHN RUSSELL DUEITT TRUST; from Montgomery County; 9th district
(09-05-00424-CV, ___ SW3d ___, 00:
1-07)

07-0309 JERRY O. DUEITT v. TERRY RUSSELL DUEITT TRUSTEE OF THE JENNIFER ANN DUEITT TRUST; from Montgomery County; 9th district
(09-05-00432-CV, ___ SW3d ___, 00:
1-07)

07-0316 JANICE MALONEY AND GEORGE LEGRAND v. ZANE MALTSBERGER; from Bexar County; 4th district
(04-05-00579-CV, ___ SW3d ___, 21:
0-06)

07-0330 ANDRE JOEL HOWARD v. HARRIS COUNTY HOSPITAL DISTRICT AND TWCC; from Travis County; 3rd district
(03-06-00488-CV, ___ SW3d ___, 00:
7-06)
motion for involuntary dismissal denied

07-0331 SID WEINBERGER v. LARRY G. LONGER; from Galveston County;

14th district
(14-05-01285-CV, ___ SW3d ___, 00: 8-07)

07-0376 RICHARD JOHN FLORANCE, JUNIOR v. BRENDA TAYLOR; from Collin County; 5th district
(05-06-00992-CV, ___ SW3d ___, 10-0-07)

07-0418 IN THE INTEREST OF J.R. AND B.R.; from Harris County; 14th district
(14-05-01216-CV, ___ SW3d ___, 10-0-07)

07-0430 IN THE INTEREST OF A.D.G., M.D.G., C.G., J.D.G., AND K.C.G., MINOR CHILDREN; from Ellis County; 10th district
(10-07-00047-CV, ___ SW3d ___, 20: 8-07)

THE FOLLOWING PETITION FOR REVIEW IS STRUCK PURSUANT TO TEXAS RULE OF APPELLATE PROCEDURE 9.4(i):

07-0483 LUCILLE R. KELLEY v. HUMBLE INDEPENDENT SCHOOL DISTRICT, DR. MARY WIDMIER AND ALICIA BOSTON MACE; from Harris County; 1st district

(01-05-00761-CV, ___ SW3d ___, 20: 9-07)

The Court strikes the petition for review with the following notations: "The petition violates Texas Rules of Appellate Procedure 53.6 and is struck. Petitioner is ordered to redraw; the petition is due to be filed no later than 5:00 p.m., July 2, 2007."

ORDERS ON MOTIONS FOR REHEARING

THE MOTION FOR REHEARING OF THE FOLLOWING PETITION FOR REVIEW IS GRANTED:

06-1044 GENEVIA BUSHNELL AND DEWARD RAYMOND (D.R.) BUSHNELL v. JANET MOTT; from Gillespie County; 4th district (04-05-00846-CV, ___ SW3d ___, 13-06)
denial of petition for review on February 23, 2007, withdrawn
motion for rehearing granted

[**Note**: The petition for review remains pending before this Court.]

THE MOTION FOR REHEARING OF THE FOLLOWING PETITION FOR REVIEW IS DENIED:

07-0096 CEDRIC DINELL BUTLER v. EDGAR A. MASON; from Dallas County; 11th district (11-05-00273-CV, ___ SW3d ___, 21: 1-06)

MISCELLANEOUS

THE FOLLOWING PETITION FOR WRIT OF MANDAMUS IS DENIED:

07-0114 IN RE WELDON AND THENA KENNEDY AND LARRY D. AND SHERIDAN K. WATSON; from Parker County; 2nd district (02-07-00019-CV, ___ SW3d ___, 00: 2-07)
stay order issued February 15, 2007, lifted